

THE DREDGE CORP.

IBLA 78-589      Decided December 6, 1978

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying a petition for deferment of annual assessment work for mining claims N-20228.

Affirmed.

1.      Mining Claims: Assessment Work

Under sec. 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), deferment of annual assessment work for mining claims may only be granted for 2 years, and a petition for deferment beyond the authorized 2-year period is properly denied.

APPEARANCES: Rex A. Jemison, Esq., Beckley, Singleton, De Lanoy & Jemison, Chartered, Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The Dredge Corp. appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated July 24, 1978, denying its petition for deferment of annual assessment work. Deferment was denied because "deferment of annual assessment work for the claims listed in [Appendix "A"] has been granted for two successive years under serial numbers NMC-2645 and N-19649." The assessment years covered by those deferments were September 1, 1976, through August 31, 1977, and September 1, 1977 through August 31, 1978.

On September 11, 1978, appellant applied to this Board for an extension of time in which to file a brief. By order dated September 15, 1978, the extension was granted to October 13, 1978. No brief having been forthcoming we shall proceed with a decision based on the record before us. Appellant's reason for appeal is that it has been barred from access to the claim because of court proceedings then currently before the Nevada Supreme Court. This goes to the reason for the deferment, but not to the issue before us, namely, the length of the deferment.

[1] Section 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), states: "[T]he initial period [of the deferment] shall not exceed one year but may be renewed for a further period of one year if justifiable conditions exist." Regulation 43 CFR 3852.4 provides:

Period for which deferment may be granted.

If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

Neither the statute nor the regulation authorizes deferment beyond 2 years.

The legislative history of the statute supports this conclusion. Senate Report No. 405 (May 19, 1949), quotes the Secretary of the Interior as stating:

[W]hen a mineral claimant could not obtain access to the boundaries of the claim or was hindered from entering upon the surface of the claim by the adjoining landowners or holders of the nonmineral title, under the proposed legislation a deferment for not to exceed 2 years could be granted. [Emphasis added.]

U.S. Congressional Service 1405 (1949). See generally Oliver Reese, 34 IBLA 103 (1978). Appellant has shown no other statutory basis for a deferment.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

## Appendix A

DREDGE NO. 17, comprising the NE-1/4 of Section 33, T. 20 S., R. 60 E., M.D.B. & M.

DREDGE NO. 18, comprising the NW-1/4 of Section 33, T. 20 S., R. 60 E., M.D.B. & M.

DREDGE NO. 28, comprising the NE-1/4 of Section 5, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 29, comprising the NW-1/4 of Section 5, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 30, comprising the SE-1/4 of Section 5, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 31, comprising the SW-1/4 of Section 5, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 32, comprising the NE-1/4 of Section 6, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 33, comprising the NW-1/4 of Section 6, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 34, comprising the SE-1/4 of Section 6, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 35, comprising the SW-1/4 of Section 6, T. 21 S., R. 60 E., M.D.B. & M.

DREDGE NO. 38, comprising the SE-1/4 of Section 31, T. 20 S., R. 60 E., M.D.B. & M.

DREDGE NO. 39, comprising the SW-1/4 of Section 31, T. 20 S., R. 60 E., M.D.B. & M.

DREDGE NO. 42, comprising the SE-1/4 of Section 32, T. 20 S., R. 60 E., M.D.B. & M.

DREDGE NO. 43, comprising the SW-1/4 of Section 32, T. 20 S., R. 60 E., M.D.B. & M.

DREDGE NO. 65, comprising the SE-1/4 of Section 13, T. 21 S., R. 60 E., M.D.B. & M.

